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SUBJECT: CHANGING KOREA'S CONSTITUTION: AN OVERVIEW

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Classified By: POL M/C James L. Wayman. Reasons 1.4 (b), (d).

11. (C) SUMMARY: This is the first in a series of cables examining the debate about revising the Republic of Korea's constitution. The current constitution, proclaimed in 1948, has been revised nine times, most recently in 1987. The 1987 revision, which is regarded as having established Korean democracy, allowed for direct election of the president, but left in place a system of governance that was part presidential and part parliamentary. This mixed system has resulted in insufficient checks on executive power and an overly majoritarian legislature (reftel). These problems have come home to roost in the current National Assembly -- in office since May 2008 -- and have caused continued inter-party fighting, deadlock, and public derision. Consequently, there is widespread agreement among leaders in both the ruling and opposition parties about the need to revise Korea's constitution in hopes that a change in democratic governance would create institutional solutions to political inefficiencies. The result has been a thoughtful and relatively apolitical discussion among politicians and opinion leaders about what form of democratic system best fits Korea's history, future, and current societal pressures.  
END SUMMARY.

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Comment  
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12. (C) Regardless of whether lawmakers are able to achieve constitutional revision this year, the debate itself -- a mere 20 years after Korea's democratization -- is a testament to the maturity of Korean democracy and the extent to which democratic ideals are now entwined with national identity. The drive for revision clearly originates with the elite but is also at least in part a response to declining public trust in the government. Infighting in the National Assembly and concern that the conservative Lee Myung-bak government is trying to consolidate power in the executive has resulted in deepening public distrust of the political process. Despite the dissatisfaction with the current state of affairs, however, the discussion has exposed the country's deep commitment to the electoral process, concern about balance of power, and the function and future of political parties.

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Drive for Change  
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13. (SBU) On July 17, 2009, Korea celebrated the 61st anniversary of the promulgation of the constitution. The National Assembly was unable to mark the 60th anniversary in 2008 because the then-newly elected assembly -- already more than ten weeks into its term -- was too torn by partisan bickering to even convene the plenary. The parliament's

difficulty in overcoming political rivalries marred its first year in office and created a receptive audience for National Assembly Speaker Kim Hyung-o, when marking the constitution's 61st anniversary, to call for a major constitutional revision. Kim called on lawmakers to pass legislation amending the constitution so that the issue could be put to a referendum in time for the June 2010 local election. Kim, who resigned his ruling party membership to become speaker, said that the current constitution failed to maintain a balance of power among the executive, legislative, and judicial branches. In November 2009, President Lee Myung-bak and Prime Minister Chung Un-chan expressed their support for constitutional revision within a year. According to a poll conducted in July 2009, 62.1 percent of respondents were in favor of amendment. More than 55 percent said the sooner revision happened, the better.

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Committees for Change  
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14. (C) National Assembly Speaker Kim Hyung-o in September 2008 convened a 15-member expert committee to conduct a year-long study examining the possibilities for constitutional revision. The committee reviewed different kinds of democratic systems and in November 2008 traveled to Germany, Portugal, Britain, and France to study the pros and cons of each system. The committee, comprised mostly of law professors, then articulated recommendations for the National Assembly's consideration. Professor Hahm Sung-deuk, a committee member, in December 2008 told poloffs that the bi-partisan group was charged with recommending a unanimous proposal for change, but he said at the time it was unlikely that all the members would agree on one system.

15. (C) In August Kim Tschol-su, Seoul National University (SNU) Professor Emeritus and a renowned expert on Constitutional Law, told poloff that, subsequent to the expert committee's report, a group of about 180 lawmakers formed to examine constitutional revision. There were three co-chairs -- Lee Joo-young (GNP), Lee Nak-yeon (Democratic Party), and Lee Sang-min (Liberty Forward Party). The committee holds a weekly seminar about the constitution, and in March 2010 the co-chairs and several other committee members will travel to Germany, France, and Italy to research those governmental systems. Still, debate in the National Assembly is behind schedule, and, to date, the three parliamentary committee co-chairs have declined meetings with poloff citing inadequate progress on the issue.

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Mechanisms of Change  
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16. (C) Changes to the Korean Constitution must be approved by two-thirds of the sitting lawmakers and then by a simple majority in a national referendum. Using the timeline from the most recent revision in 1987, this would require a National Assembly vote on the bill in late April 2010 in order to place the issue on the June 2 local election ballots. The ruling Grand National Party (GNP) currently holds 169 out of 299 total seats. If the GNP obtained the support of minor conservative parties (27 votes) and conservative independents (5-6 votes), the party would be able to eke out the two-thirds majority needed without necessitating support from the opposition. In order to unite the conservatives both in and out of the GNP, however, the party leadership would have to broker an agreement with GNP faction leader Park Geun-hye, who would be reluctant to participate in a partisan constitutional revision gambit. Moreover, the public would be unlikely to sanction a constitutional revision proposal that lacked support from the left.

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Modes of Change  
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17. (C) Hahm Sung-deuk said this was the third constitutional change committee he had served on, but he was more optimistic than ever that revision would happen. The persistently dysfunctional National Assembly had convinced many that change was necessary. Making a revision more likely, the current debate about revision had avoided issues that stymied past attempts. Chief among these was the constitutional definition of Korean territory as consisting of the entire peninsula. Instead, the current debate had focused on three competing proposals for Korean democratic governance: the presidential, dual executive, and cabinet systems.

18. (SBU) Presidential. A U.S.-style presidential system would reduce the popularly-elected president's single, five-year term to four years and would allow for a second term. This change would include creating a vice president, who would succeed the president if the office were vacated. The system would end the current practice of legislators serving in the cabinet by prohibiting lawmakers from concurrently holding another seat in the government.

19. (SBU) Dual Executive. A French-style dual executive system, favored by the majority of the expert committee's members, would allow the president and the prime minister to share executive power. The prime minister would be elected by a majority in the parliament and would have the right to form the cabinet and command the military. The position would include significant power in managing state affairs, including economic, security, and defense. The president would continue to be popularly-elected and would serve a single, five-year term. The office would retain the right to declare martial law in an emergency and dissolve the legislature if the prime minister or the cabinet failed to survive a no-confidence vote in the legislature. Other presidential rights -- ratifying treaties, issuing amnesty, declaring war, and dispatching troops overseas -- would require legislative approval.

110. (SBU) Cabinet. Others, including GNP Floor Leader Ahn Sang-soo and SNU constitutional expert Kim Tschol-su, have argued in favor of a Cabinet system like that of Germany. This would involve abolishing the office of the president and making the prime minister, as elected by the parliament, the head of state.

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Advocates for Change  
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111. (C) As Professor Hahm predicted, the expert committee was not able to come to a unanimous decision. The majority of members favored the dual executive system, but Hahm, himself, advocated the presidential system. He told poloff that there was more popular support for a U.S.-style system because most Koreans were familiar with American democracy. Hahm also felt very strongly that introducing a vice president would help balance regional tensions between southeastern and southwestern Korea and, after reunification, between North and South Korea. Hahm said he had spoken with Park Geun-hye to confirm that she also supported revision to a U.S.-style presidency. Myungji University Professor Kim Hyung-joon told poloffs that, because GNP leaders needed Park Geun-hye's support, the only way the constitution would be revised would be if the Blue House accepted the U.S.-style presidency. Kim said that Lee Myung-bak's supporters were worried about the consequences of political rivals -- like Park -- serving a total of eight years in office.

112. (C) Kim Tschol-su also said the Blue House favored a cabinet system, but he warned that the Korean people would never cede their hard-won right to directly elect the president. Consequently, a dual-executive system would be the probable compromise. For his part Kim Tschol-su was an advocate of the cabinet system, which he said would contribute to the development of political parties. A multi-party rather than two-party system was probably better for Korea, Kim said. At a National Academy of Science (NAS) conference on constitutional revision in October, Kim said that the biggest strength of a cabinet system is that the

cabinet is held responsible for governance. Contrary to the presidential system where the majority opposition party can create gridlock, the cabinet and the government work in sync under a parliamentary system.

¶13. (C) Korea University Professor Emeritus Kay Hee-yol, who also spoke at the October NAS conference, said that the system was less important than how it was implemented. Kay said that other countries had tried and failed to introduce a U.S.-style system whereas many countries had successfully adopted a cabinet system. Kay cautioned that cabinet systems need well-established parties, and, pointing to the problems in the current assembly, he expressed skepticism that Korean politicians had the skills cabinet systems require to discuss issues and arrive at compromise.

¶14. (C) Professor Kang Won-taek of Soongsil University told poloff in December that he was pessimistic about the prospects for any kind of constitutional revision. Kang noted that the last time the constitution was revised in 1987, there was a clear goal (direct election of the president) and broad public support (93 percent voted in favor of the referendum). What kind of democracy Korea should be was a harder case to make to the public, although Kang agreed that there would probably be more support for a U.S.-style system.

STEPHENS